

DATE: November 7, 2023

TO: Home and Community-Based Alternatives (HCBA) Waiver Agencies

SUBJECT: Authorization of HCBA Waiver Continuous Nursing and Supportive Services (CNSS) provided by Congregate Living Health Facilities (CLHF)

PURPOSE

The purpose of this Policy Letter (PL) is to provide HCBA Waiver Agencies with updated instructions on CLHF level of care determinations, for accurate approval of treatment authorization requests (TARs) for CNSS provided to HCBA Waiver participants in a congregate living residential setting.

AUTHORITY

[HEALTH AND SAFETY CODE \(HSC\) §1250\(i\)](#)

[HEALTH AND SAFETY CODE \(HSC\) §1265.7](#)

[HEALTH AND SAFETY CODE \(HSC\) §1267.12](#)

[TITLE 22 CALIFORNIA CODE OF REGULATIONS \(CCR\), § 51124](#)

[TITLE 22 CALIFORNIA CODE OF REGULATIONS \(CCR\), § 51124.5](#)

DEFINITIONS

- **Congregate Living Health Facility (CLHF)** – A residential home that provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social, recreational, and at least one or more of the following services:
 - Services for persons who are mentally alert, persons with physical disabilities, who may be ventilator dependent.
 - Services for persons who have a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A “life-threatening illness” means the individual has an illness that can lead to a possibility of a termination of life within five years or less, as stated in writing by his or her attending physician and surgeon.
 - Services for persons who are catastrophically and severely disabled. A person who is catastrophically and severely disabled means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided.

- **Continuous Nursing and Supportive Services (CNSS)** – A collection of nursing and personal care services that are available to enrolled participants 24 hours a day.
- **Nursing Notes** – Daily documentation of treatment and participants' responses to interventions with progress toward meeting goals, documented at least weekly or more frequently, and submitted with every TAR.
- **Nursing Services** – A CLHF shall provide nursing services provided by a RN, LVN, and a CNA.
- **Residential Care** – Long-term nursing services provided to a person living in a Congregate Living Health Facility (CLHF).

BACKGROUND

The HCBA Waiver provides medically necessary nursing services to enrolled participants in their homes or community setting of choice. Waiver participants who require skilled nursing care **above the level that is provided in a nursing facility** have the option to receive CNSS in congregate living residential care settings.

The Department of Health Care Services (DHCS) received feedback from stakeholders stating that the third level of CLHF care, the highest level of care, was almost never approved because it was labeled as “acute”; i.e., short-term, intensive care. DHCS queried utilization data and substantiated that the third level of CLHF care is significantly under-utilized when compared with historic trends. In response to the lower payments for CNSS care, several CLHF stopped accepting residents who required the highest level of care because they cannot afford to provide high-level care of patients for a lower reimbursement amount.

POLICY

As specified in Health & Safety Code section 1250(i)(1), the primary need of CLHF facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities, as defined in [22 CCR §51124](#).

When authorizing CNSS provided by a CLHF, an adjudicator must consider two (2) separate criteria:

1. **Eligibility:** As specified in Health & Safety Code section 1250(i)(2), a beneficiary is eligible to receive care in a CLHF if they require a higher level of care than what is generally provided in skilled nursing facilities but less than what is provided in general acute care hospitals, and meet at least one or more of the following criteria:

- *License Type A:* Is mentally alert, with physical disabilities, who may be ventilator dependent.
- *License Type B:* Has a diagnosis of terminal illness, a diagnosis of a life-threatening illness, or both. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon. A “life-threatening illness” means the individual has an illness that can lead to a possibility of a termination of life within five years or less as stated in writing by his or her attending physician and surgeon.
- *License Type C:* Is catastrophically and severely disabled. A person who is catastrophically and severely disabled means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a person who is catastrophically disabled shall include, but not be limited to, speech, physical, and occupational therapy.

A CLHF’s license specifies which of these criteria the facility is licensed to serve. (H&S Code section 1250(i)(3).) Before assisting a Waiver participant to move to a CLHF, HCBA Waiver Agencies should confirm that the CLHF is licensed to provide services to the participant. HCBA Waiver Agencies are responsible for confirming that the CLHF is licensed for the level/type of services required for the participant’s assessed needs prior to moving the participant to the facility.

2. **Payment:** The per diem payment for CNSS provided for an HCBA Waiver participant residing in a CLHF is determined by the amount of direct and supportive care that is required to maintain the health and safety of the participant in the community-based care setting. CLHF residents require care above that provided in skilled nursing facilities, care provided to Waiver participants who are eligible to receive CLHF services, as defined in Health and Safety Code §1250(i)(2), shall be eligible to receive the U3 level of payment. The per diem rate is equivalent to providing at least four (4) hours of residential care per day, supported by detailed nursing notes. The **U3** procedure code modifier is used to identify this LOC in TARs and claims.

Note: Skilled nursing services must be reasonable and necessary for the treatment of a patient’s illness or injury, i.e., are consistent with the nature and severity of the individual’s illness or injury, the individual’s particular medical needs, and accepted standards of medical practice. The services must also be reasonable in terms of duration and quantity. Waiver Agency adjudicators and DHCS nurse evaluators will re-evaluate the appropriateness of the services requested each time a TAR is submitted.

Providers must submit documentation to support each request.

Please refer to Appendix C of the HCBA Waiver for a comprehensive overview of CNSS, and CLHF requirements, which includes but is not limited to:

1. As part of the per diem rate there must be a minimum of at least a CNA and an LVN, awake, alert, and on duty always. At no time can two (2) CNAs be solely responsible for Waiver participants, as there must always be an RN or LVN present and “on duty.”
2. An RN will always be available on-call to the CLHF with a response time of 30 minutes or less when not on the premises.
3. An RN shall visit each waiver participant for a minimum of two (2) hours, twice a week, or longer as necessary to meet the participant’s care needs.
4. An LVN shall be in the CLHF and “on duty” at any time that an RN is not onsite.
5. A CNA may be available in the CLHF to assist the skilled nursing staff (RN and LVN) to meet the requirement of at least two (2) staff members awake, alert, and on duty always, to provide care to residents of the CLHF.
6. Services offered by a CLHF with a Level C license to a person who is catastrophically disabled shall include, but not be limited to, speech, physical, and occupational therapy. (Providers should refer to [TAR Criteria for NF Authorization](#) chart to identify therapy services that are covered in the inclusive services per diem rate and the exclusive services rate. CLHF standards are found in [Health and Safety Code Section 1267.13](#). In addition to these standards, CLHFs are required to conform to the [Title 22 California Code of Regulations \(CCR\), Skilled Nursing Facility \(SNF\)](#) regulations.)
7. The CLHF rate also includes:
 - Medical supervision
 - Case Management
 - Pharmacy consultation
 - Dietary consultation
 - Social Services
 - Recreational services
 - Transportation to and from medical appointments
 - Housekeeping and laundry services
 - Cooking and shopping

Note: Medicaid does not pay for room and board; as a result, room and board are not included in the CLHF rate. DHCS requires CLHF

settings to collect room and board payments from their residents enrolled in the HCBA Waiver Program.¹

8. No nursing personnel shall be assigned housekeeping or dietary duties, such as meal preparation.

QUESTIONS

If you have questions regarding the requirements of this PL, please contact your assigned Contract Manager, or send an email to HCBAalternatives@dhcs.ca.gov.

Sincerely,

Cortney Maslyn, Chief
Integrated Systems of Care Division
Department of Health Care Services

¹ Supplemental Security Income (SSI) in California 2023; <https://www.ssa.gov/pubs/EN-05-11125.pdf>